IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/09/2002

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THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.2051 OF 1999

E.Alwar ..... Petitioner

-Vs-

The Managing Director
Tamil Nadu Medicinal Plant Farms
and Herbal Medicine Corporation Ltd.,
Arignar Anna Goverment Hospital
Arumbakkam
Madras 106 ..Respondent

Petition filed under Article 226 of the Constitution of India for the issue of writ Certiorari as stated therein.

For petitioner :Mr.A.V.K.Ezhilmani
for
Mr.U.Thirumuruganandam

For respondent: Mr.K.Jeyakumar

:ORDER

Heard the learned counsel appearing for the parties.

2.In this writ petition, prayer has been made for quashing the order of termination issued by the respondent. Though several contentions have been raised, it is unnecessary to deal with all those contentions as in my opinion the contention relating to vulnerability of the impugned order on the ground that no show cause notice has been served on the petitioner is to be accepted. It is not disputed that the petitioner after working on N.M.R. basis for a few years had been regularly appointed and had continued in employment for considerable period under the Corporation. Suddenly, at that stage, without any notice to show cause, the services of the petitioner was terminated.

3.The learned counsel appearing for the respondent has submitted that such termination took place as the initial appointment was irregular inasmuch as the name of the petitioner had not been sponsored by the employment exchange and according to the respondent this was in violation of the provisions contained in G.O.Ms.790 Labour dated 5.7.71. In my opinion, this

ground for termination of service cannot be allowed to stand. Even though the respondent was aware that the petitioner's name had not been sponsored, the petitioner had been regularly appointed. If such an objection would have been raised at the stage of initial appointment as a casual labourer or at the time of regular appointment, it is quite possible that the petitioner would have taken steps to get himself registered in the employment exchange. Even assuming that there was some irregularity in the initial appointment and the petitioner was appointed to the post erroneously, he was allowed to continue on the said post for a long time and he could not have been removed from the service in the garb of rectification of the mistake as the doctrine of acquiescence is applicable to such cases. This position is clear in view of the decision of the Supreme Court in A.I.R. 1977 SC 112 (NAYAGAR CO-OPERATIVE CENTRAL BANK V. NARAYAN) and a Division Bench decision of Allahabad High Court in 1997 LLJ III (Suppl) 4 (PUSHPA LATA SAXENA V. CHANCELLOR, AGRA UNIVERSITY, LUCKNOW 7 OTHERS). Moreover, the stand taken by the respondent in support of the termination, therefore, cannot be accepted. Moreover, in the absence of any notice such unilateral order of termination of the employee was illegal. In such view of the matter, the order of termination is quashed and it must be taken that the petitioner is continuous in service and there is no break in service.

4.The next question is as to whether the petitioner should be paid the wages for the period during which he could not work due to the action of the respondent. It appears that after filing of the writ petition, pursuant to the interim order passed by this Court, the petitioner has been reinstated. At that time, this Court had directed that the person should be reinstated and should be paid the minimum scale of pay in the post in which he had been placed before the impugned order of termination.

5.Having regard to the facts and circumstances and keeping in view the financial condition of the Corporation, I feel in the interest of justice, it would be appropriate to give a direction that no back wages would be payable to the petitioner from the date of termination till reinstatement pursuant to the interim order passed by the High Court. However, the aforesaid period shall be treated as part of the service period of the petitioner for all other purposes, that is for the purpose of calculating subsequent increments, pension and seniority, but, no back wages should be paid for that period. So far as the period subsequent to the reinstatement is concerned, the petitioner has been paid only the minimum pay scale attached to that post. In the interest of justice, I feel so far as that period is concerned, the petitioner should be paid the regular salary from the date of reinstatement till today. The arrears for the aforesaid period should be calculated and paid to the petitioner within four months from the date of communication of the order.

6.This writ petition is accordingly allowed subject to the aforesaid observation. There will be no order as to costs.

20-09-2002

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To

The Managing Director
Tamil Nadu Medicinal Plant Farms
and Herbal Medicine Corporation Ltd.,
Arignar Anna Goverment Hospital
Arumbakkam
Madras 106